IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.815 OF 2005

ALONG WITH

CIVIL APPLICATION NO.1342 OF 2005

Dr.Vishnu Gulabchand Kakkar ...Appellant

Versus

Chandrashekhar Chandanlal Pardeshi ...Respondent

.....

Mr.Madhav Jamdar for Appellant.

Mr.A.P.Vanarase for Respondent.

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CORAM: A.M.KHANWILKAR, J.

JANUARY 13, 2006.

P.C.

1. Heard Counsel for the parties. The only contention raised before me is that the Suit was barred by limitation and the view taken by the Courts below on the point of limitation is unacceptable. The argument of limitation proceeds on the premiss that the evidence adduced by the Plaintiff itself would indicate that the last

transaction between the parties was on 30th November 1993. Whereas, the cheque is dated 7th December 2006, posterior to the period of limitation; and issuance of such cheque cannot revive period of limitation. Reliance is placed on Section 19 of the Limitation Act to support this contention. Reliance is also placed on the decision of the Apex Court in the case of **Sampuran Singh & Ors. vs. Niranjan Kaur (Smt.) & Ors. reported in (1999) 2 SCC 679**. There is no substance in this submission. For the Defendant to succeed on the issue of limitation, the Defendant will not only have to assert, but prove two facts - firstly, that the last business transaction was in November 1993 and secondly, that after 1993 the Defendant had, at no point of time, acknowledged his liability so as to revive the period of limitation, in any case till the date of cheque i.e. 7th December 2000.

2. On perusing the pleading as well as the evidence on record, it is seen that only the first fact has been asserted and evidence adduced in that behalf. There is absolutely no averment in the

written statement nor any evidence adduced by the Defendant to the effect that the Defendant had at no point of time acknowledged his liability to pay the amount which is subject matter of suit cheque before the period of limitation was to be over, in any case, till the cheque was issued on 7th December 2000. It is well known that the period of limitation will not only be from the date of the last transaction but also have to be reckoned from the date of last acknowledgement in writing made by the party in that behalf. In the present case, no such assertion has been made by the Defendant. No assertion has been made by the Defendant that he has never acknowledged his liability to pay the amount in writing. Since that case was not made out by the Defendant, the question of limitation will have to be necessarily answered against the Defendant. This is so, because there is legal presumption in favour of the Plaintiff that the cheque in question was issued by the Defendant in discharge of the legally enforceable liability. That legal presumption has not been rebutted by the Defendant for the reasons as mentioned earlier. If it is so, no fault can be found with the view taken

by the two Courts below in answering the issue of limitation in filing the Suit against the Defendant. The decision of the Apex Court relied by the Appellant will have no application to the fact situation of the present case.

3. In the circumstances, this Appeal should fail. The same is dismissed with costs quantified at Rs.7,500/- (Rupees Seven Thousand Five Hundred) to be paid within two weeks from today to the Respondent.

4. At this stage, Counsel for the Appellant prays that the execution of the decree may not be proceeded for a period of eight weeks from today, as the Appellant may like to take the matter before the Supreme Court. Execution of decree passed by the lower Court not to proceed for a period of eight weeks from today. This stay will operate after two weeks, only if the Appellant is to pay the cost quantified as aforesaid within the specified time to the Respondent.

A.M.KHANWILKAR, J.